

## § 201.23

source authorized by USAID under one of the following circumstances:

(i) the purchaser can demonstrate the existence of an emergency situation in which the requirement for competition would result in an unacceptable delay in the procurement of the commodities;

(ii) proprietary procurement is justified and the necessary commodities or spare parts are available from only one source, taking into account any special requirements such as the need for in-country service capability; or

(iii) adherence to competitive procedures would result in the impairment of the objectives of the United States foreign assistance program or would not be in the best interest of the United States.

(2) *Amendments.* Negotiation with a single source to amend an existing contract outside the scope of the contract must be justified under one or more of the criteria in paragraph (g)(1) of this section and formally approved by USAID.

(h) *Advertising—(1) Requirements.* (i) For each procurement estimated to exceed \$25,000, or equivalent (exclusive of ocean and air transportation costs), notice of the availability of the invitation for bids, request for quotations or specific information about procurements under \$100,000 shall be published by the USAID Office of Small and Disadvantaged Business Utilization/Minority Resource Center in the appropriate USAID Bulletin. The purchaser shall submit three copies of each invitation for bids or request for quotations (if any) to the USAID Mission with its request for advertising. The Mission will forward the request for advertising and the procurement documents to USAID/W. The request for advertising should arrive in the Office of Small and Disadvantaged Business Utilization/Minority Resource Center at least 45 days prior to the final date for receiving bids or quotations. The purchaser may, in addition, advertise in appropriate local, regional, and international journals, newspapers, etc., and otherwise, in accordance with local practice.

(ii) Additionally, if the estimated value of the contract is more than \$100,000, or equivalent (exclusive of ocean and air transportation costs),

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the notice of availability of the invitation for bids or request for quotations shall be published in the “Commerce Business Daily” of the U.S. Department of Commerce.

(2) *Exceptions.* (i) When negotiation with a single source has been authorized, advertising is not required.

(ii) When formal competitive bid procedures have failed to result in an award pursuant to paragraph (d)(2) of this section and a determination is made to follow competitive negotiation procedures, no further advertising is required.

(iii) The requirements for advertising as set forth above may be waived by USAID to avoid serious procurement delays in certain circumstances, provided, however, that efforts shall be made to secure bids or offers from a reasonable number of potential suppliers.

(i) *USAID approvals.* (1) Each invitation for bids or request for quotations for an USAID-financed procurement which is estimated to exceed \$100,000, or equivalent (exclusive of ocean and air transportation costs), must be approved by USAID prior to issuance.

(2) Each contract in excess of \$100,000, or equivalent (exclusive of ocean and air transportation costs), must be formally approved by USAID prior to finalization with the supplier.

(3) USAID may require that contracts under \$100,000 be formally approved prior to finalization with the supplier.

### § 201.23 Procurement under private sector procedures.

(a) *General requirements.* Procurements under private sector procedures will normally be carried out by importers using negotiated procurement procedures, unless the importer chooses to follow the procedures in § 201.22. Procurement on a negotiated basis shall be in accordance with good commercial practice. Solicitations by the importer for quotations or offers shall be made uniformly to a reasonable number of prospective suppliers, including, where feasible, producers of a commodity, and all quotations or offers received, whether or not specifically solicited, shall be given consideration before making an award.

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(b) *Publicizing.* To provide suppliers in the United States with an opportunity to participate in furnishing commodities which may be purchased on a negotiated basis under USAID financing, USAID will periodically publish for each cooperating country a list of commodities which may be expected to be imported and the names and contact information for the importers which have traditionally purchased those commodities. Interested suppliers may then make offers or furnish quotations on the products they desire to sell directly to the importers of those products. USAID will not publicize specific proposed purchases which are to be undertaken by private sector importers on a negotiated basis unless specifically requested to do so by the importer in accordance with the provisions of paragraph (c) of this section.

(c) *Notification.* If the importer elects to solicit quotations and offers for specific proposed purchases through publication by USAID, USAID will notify prospective suppliers of the export opportunity through the appropriate USAID bulletin. Requests for such notification shall be submitted to the Office of Small and Disadvantaged Business Utilization/Minority Resource Center, USAID, Washington, DC 20523-7700, and shall contain the name and contact information for the importer, a full description of the commodities and any commodity related services required, applicable price and delivery terms and other relevant procurement data, in the English language. The metric system of measurements shall be used for specifications unless USAID determines in writing that such use is impractical or is likely to cause significant inefficiencies or the loss of markets to U.S. firms.

(d) *Notice of quotations and offers received.* USAID may require that the importer furnish an abstract in the English language and identify thereon all offers or quotations received, the offer accepted or order placed, the price, the quantity, the name and address of all persons submitting offers or quotations and of their principals, if any (including manufacturers or processors of the commodity).

(e) *Procurement under special supplier-importer relationships—(1)* Solicitation of offers from more than one supplier is not required if:

(i) The importer is purchasing for resale or processing, as the supplier's regularly authorized distributor or dealer, a commodity which, under the terms of the distributorship or dealer agreement, the importer is precluded from buying from another supplier; or

(ii) The importer is purchasing for resale a registered brand-name commodity from a supplier who is the exclusive distributor of that commodity to the area of the importer.

(2) USAID may require the importer to furnish, or cause to be furnished, to USAID documentary evidence of the existence of the relationships described in paragraph (e)(1) of this section.

[55 FR 34232, Aug. 22, 1990, as amended at 64 FR 17535, Apr. 12, 1999]

### § 201.24 Progress and advance payments.

(a) *Definitions—(1) Progress payments.* Progress payments are payments made prior to shipment under a fixed price procurement contract, which are based on actual costs incurred or on an actual stage or percentage of completion accomplished.

(2) *Advance payments.* Advance payments are payments to a supplier prior to, and in anticipation of, performance under a procurement contract. They are not based on actual performance or actual costs incurred.

(b) *Progress payments—(1) Conditions for eligibility.* USAID will approve progress payments only if:

(i) The period between the commencement of work and the first required delivery will exceed four months;

(ii) There will be substantial predelivery costs that may have a material impact on a supplier's working capital;

(iii) The total FAS purchase price will exceed \$200,000;

(iv) The supplier must establish a performance bond or guaranty in favor of the borrower/grantee providing adequate security for the amount of the progress payments; and